Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements For Detariffed Services	)	CI Docket No. 02-22
Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation Of Section 254(g) of the Communications Act of 1934, as amended	)	CC Docket No. 96-61

REPLY COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"), through undersigned counsel, and pursuant to Public Notice, DA 02-271 (released February 6, 2002), hereby replies to comments of other parties upon the Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffed Services ("Petition") filed by the American Association of Retired Persons ("AARP"), Consumer Action ("CA"), Consumer Federation of America ("CFA"), Consumers Union ("CU"), the Massachusetts Union on Public Housing Tenants ("MUPHT"), the National Association of Regulatory Commissioners ("NARUC"), the National Association of Consumer Agency Administrators ("NACAA"), the National Association of State Utility Consumer Advocates ("NASUCA"), and the National Consumer's League ("NCL") (collectively, the "Joint Petitioners") in the above referenced proceeding. In the Petition, the Joint Petitioners request that the Commission institute a rulemaking proceeding for the purpose of "impos[ing] a minimum 30 day notice requirement"

which would limit a carrier's ability to modify rates for interstate, domestic interexchange services which have been detariffed by the Commission."[1]

Vitually all commenters agree with ASCENT that in connection with its decision to detariff the provision of interstate, domestic interexchange services, the Commission has already reached the appropriate balance, ensuring consumers will have access to sufficient information in order to reach informed telecommunications services choices without unduly burdening carriers financially or operationally by micromanaging the means such information is provided by carriers. Like ASCENT, these commenters urge the Commission to refrain from imposing additional, unduly costly requirements such as those advocated by the Joint Petitioners. While well-meaning, the proposed notice requirement is unlikely to significantly increase the information presently available to consumers. The comments also echo ASCENT's position that the Commission has already ensured consumers an appropriate means of addressing perceived inappropriate carrier behavior (through the Commission's complaint processes), making imposition of yet "another layer of administrative burden and costs to the IXCs" especially ill-advised since "[s]uch a requirement ultimately and negatively affects consumers by raising rates and threatening competition, especially in the low-volume residential market."[2] In short, the comments reveal that the rulemaking sought by the Joint Petitioners is neither necessary nor appropriate and should not be undertaken.

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[1] Petition, p. 1.

[2] Comments of Competitive Telecommunications Association ("CompTel"), p. 2.

ASCENT agrees with those commenters who urge the Commission to refrain from implementing the rulemaking sought by the Joint Petitioners inasmuch as the rule sought by the Joint Petitioners will be too costly for carriers to implement and will likely pose an unwarranted chilling effect on the competitive nature of the interstate, interexchange telecommunications services market. As Qwest notes, "advance notice of price increases can be an extremely expensive proposition, and overly intrusive notice requirements could have the unintended effect of causing long distance rates to increase."[3] Demonstrating just how costly this proposition is likely to be, Qwest "estimates that its costs of notifying a million customer by mail or bill insert/message would exceed $500,000. These are typically recouped by the carrier from customers."[4] And as Americatel Corporation points out because "profit margins in the long distance telecommunications industry are quite thin today[,] most carriers, large or small, simply do not have the ability to incur additional costs without passing them on to consumers."[5] Likewise, AT&T notes that "[t]he particular type of notice required by any new rule [sought by the Joint Petitioners] is likely to generate the greatest regulatory costs for all parties involved . . . [A]dvance written notice is by far the most expensive form of choice."[6] Worse yet, it is the unfortunate truth that "the cost of compliance with a minimum notice requirement imposes a disproportionate burden on the smallest IXCs, requiring those carriers to spend greater resources in terms of personnel and administration to comply with notice requirements."[7]

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[3] Comments of Qwest Communications International Inc. ("Qwest"), p. 9.

[4] Id., p. 7.

[5] Comments of Americatel Corporation ("AmericaTel"), p. 9.

[6] Comments of AT&T Corp. ("AT&T"), p. 5.

[7] Comments of CompTel, p. 6.

It is neither necessary or appropriate, however, for the Commission to consider imposing this "most expensive choice." As NCTC Long Distance, Clarks Long Distance and NNTC Long Distance (collectively, the Nebraska IXCs") point out, "the requirement to send the notice by 'bill insert, postcard or letter' is unnecessarily restrictive. Regulatory commissions have sanctioned many other methods for notifying customers of rate changes."[8] AT&T suggests that

> [i]f a residential customer . . . or business customers can get access to information regarding changes from a carrier's website or by e-mail, there is no reason to incur the significant costs of written notice. Likewise, if a carrier and a business customer individually negotiate a service contract that itself provides for the manner in which rate changes can be made, these mutually-agreeable provisions should supercede any generic notice requirement.[9]

[8] Comments of the Nebraska IXCs, p. 7. As the Nebraska IXCs also note, the state-level notification requirements for intrastate, interexchange services to which interexchange carriers are already subject "are less restrictive, while they still provide adequate notice to customers." Id., p. 8.

[9] Comments of AT&T, p. 6.

ASCENT agrees. Furthermore, the above position is fully consistent with the decisions of both the United States Court of Appeals for the District of Columbia Circuit and for the Tenth Circuit, cited by Sprint, namely, that "[a] government agency dictating when and how IXCs are to communicate to their customers material changes in their service offerings would appear to be at odds with the 'essence of [the Commission's] reasoning"[10] in mandating detariffing as an initial matter and that "[p]lacing any restrictions on how a carrier communicates information to its customers may raise constitutional concerns."[11] It would be most appropriate, as IDT Corporation urges, for the Commission to "continue to grant carriers the freedom to design customer service procedures according to the needs of their subscribers rather than requir[ing] carriers to implement Commission-designed procedures that may not reflect the particular needs of a carrier's subscribers."[12]

[10] Comments of Sprint Communications Company, L.P. ("Sprint"), p. 2, citing MCI WorldCom, Inc. v. FCC, 209 F.3d 760, 765 (D.C. Cir. 2002).

[11] Id., p. 5, footnote 6, citing U S West v. FCC, 182 F.3d 1224 (10th Cir. 1999) and cases cited therein.

[12] Opposition of IDT Corporation ("IDT"), p. 4.

Commenters raise numerous other concerns with the Joint Petitioners' request, noting that the imposition of a minimum 30-day advance notice period would "undermine the Commission's decision to remove tariff-filing and associated notification requirements,"[13] and "make it very difficult for a carrier to respond to competition, thus impeding the operation of market forces and limiting consumer options,"[14] Verizon, which also "opposes the petitioner's request for a rulemaking",[15] highlights the inappropriately extreme operation of the proposed rule. The "written notice rule that the Petitioners seeks," Verizon observes, "would not only interfere with market forces, but it would be even more restrictive than the notice period that the Act and the Commission's rules impose on dominant local exchange carriers."[16] Similarly, SBC Communications, Inc. ("SBC"), which "opposes this request . . . [as] unwarranted and contrary to the public interest,"[17] asserts that "the proposed notification period would undermine two decades of Commission findings that advance public notice of nondominant IXC rates, terms and conditions is not necessary."[18] While SBC and ASCENT rarely find themselves in philosophic accord, in this instance ASCENT agrees with SBC's assessment that "a mandatory notification requirement could prove harmful to competition, and ultimately consumers. This is particularly true where carriers seek to reduce rates."[19]

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[13] Comments of Moultrie Infocomm, Inc., p. 2.

[14] Comments of Americatel, p. 2.

[15] Comments of the Verizon telephone companies ("Verizon"), p. 1.

[16] Id., pp. 3-4.

[17] Comments of SBC Communications Inc. in Response to Joint Petition, p. 1.

[18] Id., p. 3.

[19] Id, p. 4.

Like ASCENT, various other commenters also note the existence of the Commission's complaint processes, and attach particular significance to the Commission's conclusion that "it could rely on market forces, the section 208 complete process, and its authority to reinstate tariff requirements," if necessary, to protect consumer interests.[20] Indeed, the Commission's "pledge to use [its] complaint process to enforce vigorously [its[statutory and regulatory safeguards against carriers that attempt to take unfair advantage of American consumers," to which the Joint Petitioners themselves point, renders "imposing a thirty-day notice period unnecessary . . . [since] a process already exists to prevent unfair treatment of consumers."[21]

In light of the above concerns, raised by commenters from widely diverse segments of the telecommunications arena, ASCENT must here repeat its request that the Commission deny the Joint Petitioners' request for initiation of a rulemaking aimed at imposing an advance written notice requirement prior to any changes in rates, terms or conditions for interstate, interexchange telecommunications services. Such an advanced notice requirement would, as noted above, significantly increase carrier costs, in many cases necessitating the passing through of such costs to consumers (many of whom neither want nor require notice of such changes in addition to that presently required by the Commission rules and regulations). These additional costs would not be adequately counterbalanced by marginal increases in consumer knowledge of carrier rates, terms and conditions of service. As ASCENT and other commenters demonstrate, the Commission has already struck the appropriate balance between the need to provide such information to consumers, on the one hand, and the need to avoid the

[20] Comments of WorldCom, Inc., p. 2. See also, Comments of the Nebraska IXCs, p. 3 ("Any concerns that the Petitioners may have about the services of Sprint, Qwest and AT&T can be addressed through the FCC's complaint proceedings.")

[21] Opposition of IDT, p. 5.

imposition of unreasonable and necessary costs upon carriers on the other. It should not now deviate from that course.

Consistent with the above, the Association of Communications Enterprises hereby repeats its request that the Commission refrain from imposing additional consumer notification requirements upon nondominant interexchange carriers as urged in the Petition.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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March 25, 2002

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